

Todd Brinkmeyer v. Washington State Liquor and Cannabis Board – No. 3:20-cv-05661-BHS

Exhibit 2 to Declaration of Rebecca Smith in Support of Respondent's Motion for Summary Judgment

**BENZINGA**

News Markets Ratings Ideas Fintech ••• MY STOCKS TOOLS PREMIUM

QQQ  
358.94

▲ 2.03%

DIA  
347.22

▲ 0.03%

SPY  
445.24

▲ 0.74%

TLT  
142.48

Search Tickers, Companies or News...

# 2 Years After Sessions Rescinded Cole Memo, Prosecutors Continue To Adhere To Obama-Era Enforcement Guidelines

by Benzinga Cannabis Contributors

January 8, 2020 12:24 PM | 5 min read



## Create a Watchlist

FREE: Follow your stocks and cryptocurrencies with the most actionable alerts on the internet.

CLICK TO GET STARTED

**TODAY ONLY! For only \$7, you can get 2 winning options trade alerts every month! [Click Here to See Trade Ideas!](#) (Risk-free with a 14 day refund guarantee)**

By Tom Firestone of [Baker McKenzie](#).

January 4, 2020 marked the two year anniversary of the “[Sessions Memorandum](#)” in which (then) Attorney General Jeff Sessions rescinded the Cole Memorandum and other Obama era DOJ guidance which essentially stated that DOJ would not prosecute state-compliant marijuana-related activity. Many saw the statement as a declaration of a new “War on Drugs.” However, a review of DOJ cases brought over the last two years reveals that the Trump Justice Department has largely adhered to the Obama Administration’s enforcement priorities.

## The Cole Memorandum

**[ALERT] Nic Chahine shares his Bear Market Beating options trading strategy. [Click Here to Watch!](#)**

7 Retirement Mistakes to Avoid?

The [Cole Memorandum](#) stated that federal cannabis enforcement resources would be concentrated on cases involving:

- Revenue from the sale of cannabis going to criminal enterprises, gangs, and cartels,
  - State authorized cannabis activity being used as a cover or pretext for the trafficking of other illegal
- Want Real Time Gainers?**  
**Start a free 14 day trial**

## Profit From Marijuana Stocks

Alan Brochstein’s 420 Investor is the go-to community for investors to learn, explore, and profit from the marijuana companies. The main goal of 420 Investor is to provide real-time, objective information about the top marijuana companies in the market in order to help investors capitalize on cannabis.

[Start Investing](#)

### Cannabis Movers

Gainers

Losers

Company	Ticker	Price	±%
GRIDIRON BIONUTRIENT...	GMVP	\$1.51	0% ▲
INVICTUS MD STRAT NE...	IVITF	\$0.000001	0%
TETRA BIO-PHARMA INC ...	TBPMF	\$0.08	3.23%
Sundial Growers Inc. - Co...	SNDL	\$0.4739	4.52%
BLUEBERRIES MEDICAL C...	BBRRF	\$0.05365	4.38%
22nd Century Group, Inc...	XXII	\$2.12	3.92%
GSRX INDUSTRIES INC bv...	GSRX	\$0.0001	0% ▼

[See all cannabis stocks](#)

Quotes delayed up to 15 minutes

drugs or other illegal activity,

- Violence and the use of firearms in the cultivation and distribution of cannabis,
- Distribution of cannabis to minors,
- Diversion of cannabis from states where it is legal under state law in some form to other states,
- Drugged driving and the exacerbation of other adverse public health consequences associated with cannabis use,
- Growing of cannabis on public lands and the attendant public safety and environmental dangers posed by cannabis production on public lands, and
- Cannabis possession or use on federal property.

The Cole Memorandum also stated that:

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above.... The primary question in all cases – and in all jurisdictions-should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

In other words, so long as a marijuana business complied with state law, it would not be subject to federal prosecution unless it violated one of the Cole Memorandum priorities. At his confirmation hearing in 2018, Attorney General Barr suggested that DOJ would not prosecute state compliant marijuana activity but has left the Sessions Memorandum in place as

## Benzinga is Hiring

We're an experienced team that is looking for a smart, driven, self-starter who has a high-level awareness to anticipate things that need to be done or comes up with new ideas to improve the product experience for our users.

[Apply](#)

### SIGN UP FOR OUR SECRET CANNABIS NEWSLETTER!

Never miss out on the breaking news in the Cannabis Industry!

☒ Email

## Top Cannabis Stories

**00Ketamine Rapidly Reduces Depression, According To 'Most Comprehensive Review'...**

1

**00A New Study Suggests An Effective Replacement For Marijuana Breathalyzers - Benzinga**

2

official DOJ policy. Nevertheless, the Sessions Memorandum appears to have done little to change Obama Administration policy.

## DOJ Cases

We reviewed DOJ press releases on approximately 50 federal prosecutions involving marijuana during the period 2018-2020 and did not find one that involved purely state compliant activity. In fact, almost all involved Cole Memorandum priorities – most commonly, organized crime, the use of firearms, and trafficking of other illegal drugs. Those prosecutions which did not involve one of the Cole Memorandum priorities took place in states where recreational marijuana has not (or had not yet) been legalized, such as Texas, Oklahoma and Georgia.

This review also revealed another federal enforcement priority not identified in the Cole Memorandum – public corruption in the marijuana industry. For example, one reported case involved a former Maryland state delegate who allegedly took bribes in exchange for voting in favor of a bill to increase the number of medical marijuana grower and processing licenses available to an out-of-state company. Another involved a police officer who used his official position to protect a marijuana trafficking business. One case involved a Border Patrol Agent who took bribes from a suspected drug trafficker in exchange for information about Customs Border Protection surveillance. Another involved the prosecution of the Mayor of Fall River, Massachusetts for extorting more than \$250,000 in bribes from cannabis businesses in return for assistance with licenses.

**LEXX : Lexaria Emphasizes Oral Cannabinoid Benefits Following SARS-CoV-2...**

3

**HEXO, TSX:HEXO : Hexo Receives Notification From NASDAQ On Failing To Meet Minimum Bid...**

4

**00The Case For Psilocybin Therapy And Depression - Benzinga**

5

## Sponsored Content

**FB, ZM : Meta-stasis: Tech Giant's Reach Grows — Where Is This Headed?**

1

**BETRF : EXCLUSIVE: Can Non-Hallucinogenic Psychedelic Compounds Treat Mental Health...**

2

**GILD, MTNB, RHHBY : On Target: This Company Says It Delivers Drugs Exactly How You Need...**

3

**AHCO, AMED, APR, QIPT, VMD : This Industry, Important for Quality of Life, Is Big Business**

4

**MIGI, TSLA : This Bitcoin Mining Company Says It's Committed to Sustainability**

5

In such official extortion cases, legitimate marijuana businesses, far from being prosecuted, are actually treated as victims. We did not identify any cases involving the prosecution of financial institutions for laundering marijuana proceeds. Nor did we identify any cases involving the prosecution of ancillary legitimate businesses that supported marijuana businesses by providing them with otherwise legitimate products or services.

Finally, almost all of the DOJ press releases express appreciation to state and local law enforcement and many cited the Organized Crime Drug Enforcement Task Force (OCDETF) program, a federal multi-agency, multi-jurisdictional task force that supplies supplemental federal funding to federal and state agencies to help them disrupt and dismantle drug trafficking organizations. Such statements indicate the great extent to which federal narcotics enforcement is dependent on assistance from state and local law enforcement. As long as this remains the case, state compliant behavior is unlikely to be prosecuted, regardless of DOJ's publicly stated policy.

See Also: [MedMen CEO On Recent Layoffs: 'We're On Chapter Two, Where Execution Means Profitability'](#)

*Tom Firestone is a Partner at Baker & McKenzie LLP. He is Co-chair of the firm's North American Government Enforcement practice and is a member of the Firm's Global Compliance & Investigations Steering Committee. He represents clients in matters involving anti-corruption and the US Foreign Corrupt Practices Act (FCPA), internal investigations and transactional due diligence. Prior to joining the Firm, he spent 14 years at the US Department of Justice. He worked as an Assistant US Attorney in the Eastern*

*District of New York where he prosecuted transnational organized crime cases. He also worked as Resident Legal Adviser and Acting Chief of the Law Enforcement Section at the US Embassy in Moscow.*

The preceding article is from one of our external contributors. It does not represent the opinion of Benzinga and has not been edited.

## **If you are not using this trading strategy, you are leaving money on the table...**

If you are blindly looking up and trading stocks the way 99% of traders are, you are missing on HUGE potential returns. Even new traders who started following this option trading strategy instantly began seeing returns they wouldn't have had otherwise. With even two trades per month with this strategy, you will start seeing the difference in your trading account. Don't waste any more time "guessing" and "getting lucky". **[Click Here to See if you Qualify for Benzinga Options!](#)**



For today only, we are gifting away our Benzinga Options Starter newsletter for only \$7. This includes two heavily researched trades per month from lead trader, Nic Chahine. For the same cost of a cup of coffee, less than the cost of a Netflix subscription and less than the average order at McDonalds you will receive top tier education and winning trade alerts to maximize your portfolio returns. This also includes a 14 day full money-back guarantee if you cancel. There is absolutely no risk!

**[Click Here Now to Get Started!](#)**